163 - 698

TRANSCRIPT OF RECORD.

163-698

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 201.

THE NORTHERN PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

MICHAEL C. CAVANAUGH.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED DECEMBER 9, 1892.

(15,229.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 9, 1895.

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May session, 1892, of the October term, 1891, of said court, begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in May, to wit, the second day of May, A. D. 1892, before the Honorable Henry C. Caldwell and Honorable Walter H. Sanborn, circuit judges, and Honorable Oliver P. Shiras, district judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the twenty-third day of March, A. D. 1892, a transcript of record in pursuance *to* a writ of error directed to the circuit court of the United States for the district of Minnesota was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit; which said transcript of record is in the words and figures following, to wit:

1 United States of America to Michael C. Cavanaugh, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the United States circuit court, dist. of Minnesota, 3rd div., wherein The Northern Pacific Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable R. R. Nelson, judge of the circuit court for the district of Minnesota aforesaid, this 23rd day of January, A. D. 1892.

R. R. NELSON,
Judge of U. S. Circuit Court.

Original. United States circuit court of appeals, eighth circuit. N. P. R. R. Company, plaintiff in error, *vs.* M. C. Cavanaugh Citation. Service of the within citation is hereby admitted at St. Paul, Minnesota, on this 23rd day of January, A. D. 1892. Erwin & Wellington, att'ys for Michael Cavanaugh. Filed Jan'y 23rd, 1892. Oscar B. Hillis, clerk. —— ——, att'y for plaintiff in error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States, district of Minnesota, third division, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before

you at the June term, 1891, thereof, between Michael C. Cavanaugh, plaintiff, and The Northern Pacific Railroad Company, defendant, a manifest error hath happened, to the great damage of the said Northern Pacific Railroad Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals, for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 23rd day of March, 1892, to the end that the record and proceedings aforesaid being inspected, the United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

2

Seal of U. S. Circuit Court, Dist. of Minnesota, Third Division.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-third (23rd) day of January, in the year of our Lord one thousand eight hundred and ninety-two.

Issued at office in St. Paul, Minnesota, with the seal of the United States circuit court, district of Minnesota, and dated as aforesaid.

OSCAR B. HILLIS,
Clerk of United States Circuit Court for District of Minnesota.

Allowed by—
R. R. NELSON, *Judge.*

Original. United States circuit court of appeals, eighth circuit. N. P. R. R. Company, plaintiff in error, *vs.* M. C. Cavanaugh. Writ of error. —— ——, att'y for plaintiff in error.

UNITED STATES OF AMERICA, *District of Minnesota,* } *ss:*

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

Seal of U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the circuit court of the United States in and for the district of Minnesota, third division.

OSCAR B. HILLIS,
Clerk of said U. S. Circuit Court.

Know all men by these presents, that we, The Northern Pacific Railroad Company, by Tilden R. Selmes, its attorney, as principal, and The Saint Paul Title Insurance and Trust Company, of Saint Paul, Minnesota, as surety, are held and firmly bound unto Michael C. Cavanaugh in the full and just sum of five thousand ($5,000.00) dollars, to be paid to the said Ralph Peterson, his heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas, lately at the June, 1891, term of the United States circuit court, dist. of Minnesota, 3d division, in a suit depending in said court between Michael C. Cavanaugh, plaintiff, and The Northern Pacific Railroad Company, defendant, judgment was rendered against the said defendant, and the said defendant, has obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Michael C. Cavanaugh, citing and admonishing him to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said Northern Pacific Railroad Company shall prosecute said writ of error to effect and shall answer all damages and costs if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

NORTHERN PACIFIC RAILROAD COMPANY,
By TILDEN R. SELMES, *Its Attorney.*
[CORPORATE SEAL.] ST. PAUL TITLE INSURANCE & TRUST CO.,
By ROBERT R. DUNN,
Vice-President.

Attest: L. H. CASE, *Ass't Secretary.*

In presence of—
EDWIN IRLE.
C. R. WILKINSON.

Indorsed: Supersedeas bond. Approved. R. R. Nelson (in pencil). Bond satisfactory. C. Wellington.
Indorsed: Jan'y 23, 1892. Oscar B. Hillis, clerk.

UNITED STATES OF AMERICA:

MICHAEL C. CAVANAUGH, Plaintiff,
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota, of the June term, A. D. 1891, of said court, held in the city of St. Paul, in said district, in the year 1891.

4 DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on this 24th day of June, 1890, came the plaintiff and filed in the clerk's office of said court his bill of complaint in words and figures as follows, to wit:

United States Circuit Court, District of Minnesota.

MICHAEL C. CAVANAUGH, Plaintiff,
against
THE NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

The plaintiff, Michael C. Cavanaugh, as his cause of action against the defendant, The Northern Pacific Railroad Company, respectfully shows:

That the plaintiff is a citizen of the State of Washington.

That defendant is now, and at all times hereinafter named, was a corporation duly created, organized and existing under and by virtue of an act of Congress of the United States, approved July 2, 1864, entitled "An act making a grant of land to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound by the northern route," and those subsequent acts and joint resolutions of Congress relating to the same subject-matters, and as such corporation engaged in the business of operating and running trains upon its said railway tracks between the said points and elsewhere, and especially upon a portion of its said tracks in the State of Washington known as the Idaho division of its line.

That on and prior to the 4th day of November, 1889, the plaintiff was in the employ of the said defendant as a brakeman, and as such, engaged in the performance of his duties on a certain freight train consisting of a locomotive and a large number of freight cars, then operated by defendant on its said Idaho division, between a certain station thereon called Marshall Junction and another named Spokane Falls.

That he was, at all the times herein named, under the control and subject to the orders of a certain conductor that was in the employ of the defendant, and who was by the defendant placed in charge of and in complete control of said train.

That the name of said conductor plaintiff cannot give other than his surname, to wit, King.

That prior to arriving at said Marshall Junction, the said con-

ductor duly received his orders from the train-dispatcher of defendant at Sprague, a station on said division, to wait at said Marshall Junction for another train then being operated by defendant upon its said tracks and called "Number 13," the said last-named train being run and operated in a direction opposite to that in which the train that plaintiff was employed on was running.

That said conductor negligently failed to obey his said orders, but wrongfully and negligently proceeded from Marshall Junction towards the said Spokane Falls without awaiting the arrival of said "Number 13," at said Marshall Junction.

That while the train on which plaintiff was employed was running at from twenty to twenty-five miles an hour, and at about one and three-quarters miles from said Marshall Junction, it collided with the said train "Number 13," then running at a rapid rate in an opposite direction on the same line of track.

That such collision was caused solely by the negligence of the conductor as aforesaid in operating his train in the manner hereinbefore set forth, in disobedience of the orders he had received at Sprague, as aforesaid.

That the force of the collision was so great as to practically destroy the locomotives hauling the said trains, and that in order to escape death or great bodily injury, the plaintiff was obliged to and did jump from his said train as the collision took place.

That in so jumping he came in contact with certain ties on the defendant's right of way, and thereby received several wounds, injuries and contusions upon his left leg and other portions of his body, and was particularly injured upon the shin-bone of said left leg, and the muscles and cords of said left leg so sprained and injured that he has never recovered therefrom, and has suffered grave and permanent injuries of said left leg, and particularly to the ankle thereof. That he is as yet unable to walk without suffering severe pain, and has thereby been incapacitated from performing labor, and has been injured thereby to his damage in the sum of four thousand five hundred dollars.

That at the time of receiving the injuries aforesaid, the plaintiff was in good bodily health, and by his labor could and did earn seventy-five dollars per month, and on account of such injuries has been unable since that to perform labor, and that the reasonable value of his time lost on account of such injuries is seventy-five dollars per month; and that by reason of the loss of such time and his disability to labor on account of such injuries, he has been damaged in the sum of five hundred dollars.

Wherefore, plaintiff demands judgment against the defendant for the sum of five thousand dollars, besides the costs and disbursements of this action.

Dated this 17th day of May, 1890.

ERWIN & WELLINGTON,
Attorneys for Plaintiff.

6 STATE OF MINNESOTA, } ss:
County of Ramsey, }

Michael C. Cavanaugh came before me personally, and being duly sworn doth say that he is the plaintiff in the above-entitled action and acquainted with the facts; that the foregoing pleading is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

M. C. CAVANAUGH.

Subscribed and sworn to before me on this 15th day of May, A. D. 1890.

[NOTARIAL SEAL.] JOHN S. SANBORN,
Notary Public, Ramsey County, Minn.

Indorsed: Complaint. Filed June 24th, 1890. Oscar B. Hillis, clerk.

And on the same day the following summons was issued; the same was returned with marshal's return of service thereon and filed on the 4th day of August, 1890.

In the Circuit Court of the United States for the District of Minnesota.

Summons.

UNITED STATES OF AMERICA, } ss:
District of Minnesota, Third Division, }

MICHAEL C. CAVANAUGH
against
THE NORTHERN PACIFIC RAILROAD COMPANY.

The President of the United States of America to the defendant above named, Greeting:

You are hereby summoned and required to answer the complaint in this action, which has been filed in the office of the clerk of this court, in St. Paul, county of Ramsey and State of Minnesota, and file your answer in said clerk's office within twenty days after the service hereof, excluding the day of such service, and if you fail to answer the complaint as aforesaid, the plaintiff will have the amount he is entitled to recover ascertained by the court, or under its direction, and take judgment for the amount so ascertained; besides the costs and disbursements of this action.

7 For the marshal of the district of Minnesota to execute.

Witness, the Hon. Melville W. Fuller, Chief
[SEAL OF COURT.] Justice of the Supreme Court of the United States of America, this 24th day of June, A. D. 1890.

Issued at my office in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy*.
ERWIN & WELLINGTON,
Plaintiff's Attorneys.

United States circuit court, district of Minnesota, third division. No. —. Michael C. Cavanaugh, plaintiff, *vs.* The Northern Pacific Railroad Company, defendant. Summons. (Original.) Returned and filed ——, A. D. 189–. —— ——, clerk. By —— ——, deputy. Filed Aug. 4th, 1890. Oscar B. Hillis, clerk. Erwin & Wellington, plaintiff's attorneys.

UNITED STATES OF AMERICA, *District of Minnesota*, } *ss:*

I hereby certify and return that I have served the annexed subpœna on the therein-named Northern Pacific R. R. Co., by handing to and leaving with Jno. C. Bullitt, Jr., solicitor, a true and correct copy thereof personally at St. Paul, in said district, on the 30th day of June, A. D. 1890.

J. C. DONAHOWER,
U. S. Marshal,
By W. S. DAGGETT, *Deputy*.

Marshal's fees, $2.12.

And on the 8th day of January, A. D. 1891, the following answer was filed of record in said cause, to wit:

United States Circuit Court, District of Minnesota.

MICHAEL C. CAVANAUGH, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Defendant, for answer to the complaint of the plaintiff herein, admits that the plaintiff is a citizen of the State of Washington; it admits that the defendant is a corporation organized and created under the laws of the United States, and admits that it was engaged in the operation of a railroad substantially as alleged in said complaint; and for further answer in this behalf defendant denies each and every allegation in said complaint contained, and every part thereof, save as hereinbefore expressly admitted or qualified.

8 Defendant further specifically denies that by reason of any of the matters or things in said complaint set forth, the plaintiffs has been damaged in the sum of five thousand ($5,000.00) dollars, or in any sum whatsoever.

Wherefore, defendant asks judgment that it may be hence dismissed, and for its costs and disbursements in this action.

JNO. C. BULLITT, JR., &
TILDEN R. SELMES,
Attorneys for Defendant, St. Paul, Minn.

Dated July 18th, 1890.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Tilden R. Selmes came before me personally, and being duly sworn, says that he is an officer, to wit, assistant counsel of defendant in the above-entitled action; that the foregoing answer is true of his own knowledge, except as to those matters therein stated on his information and belief, and as to those matters that he believes it to be true.

TILDEN R. SELMES.

Subscribed and sworn to before me this 18th day of July, A. D. 1890.

[NOTARIAL SEAL.] EDWIN IRLE,
Notary Public, Ramsey County, Minnesota.

Indorsed: Answer. Due service of the within answer admitted this 18th day of July, 1890. Erwin & Wellington, plaintiff's att'ys. Filed Jan'y 8th, 1891. Oscar B. Hillis, clerk.

And on the same day the following stipulation was filed of record in said cause, to wit:

Stipulation.

United States Circuit Court, District of Minnesota.

MICHAEL C. CAVANAUGH, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

It is hereby stipulated that the plaintiff sustained damages in the amount of two thousand and one dollars for the injuries complained of in the complaint.

Dated July 25th, 1891.

WERWIN & WELLINGTON,
Attorneys for Plaintiff.
JNO. C. BULLITT, JR.,
Attorney for Defendant.

9 Indorsed: Stipulation that plaintiff sustained damages in amount of $2,001.00. Filed July 24th, 1891. Oscar B. Hillis, clerk.

And on the same day the following stipulation waiving a jury and stipulation of facts was filed of record in said cause, to wit:

United States Circuit Court, District of Minnesota.

MICHAEL CAVANAUGH, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

It is hereby stipulated by and between the parties to the above-entitled cause that a jury be and hereby is *is* waived on the trial of the same, and that the same shall be submitted to the court upon the stipulation of facts made in said cause and without a jury.

Dated July 23rd, 1891.

ERWIN & WELLINGTON,
Attorneys for Plaintiff.
JNO. C. BULLITT,
Attorney for Defendant.

Indorsed: Stipulation waiving a jury. Filed July 23rd, 1891. Oscar B. Hillis, clerk.

Stipulation.

United States Circuit Court, District of Minnesota.

MICHAEL C. CAVANAUGH, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

It is stipulated and agreed by and between the parties hereto that the facts of this case, in addition to those facts established by the pleadings herein, are as follows:

On November 4, 1889, plaintiff was in defendant's employ as a brakeman. He had been employed by defendant in this capacity for some time prior to said date, and was familiar with his duties and the method of performing them, and was a skillful and competent brakeman.

His duties as such brakeman were those ordinarily and usually pertaining to that position in railway employment.

On the date of the accident he was running one of defendant's freight trains, known as number 14, in Washington. This train was running eastward, and was being operated upon what is known as telegraphic orders. The rule of defendant in force and effect at that time, and known to plaintiff and other trainmen on said train, in respect of running and operating trains on telegraphic orders, are found on pages 36 to 49 *of* inclusive — defendant's book of rules, being numbered from 114 to 133, inclusive, and are hereby made a part of this stipulation, as fully as if set out in full herein.

The stations on defendant's railroad, so far as material to this case, are, commencing at the west and running thence east, Sprague, Tyler, Cheney, Marshall Junction, Spokane Falls, Trent, Hauser Junction and Rathdrum. When train No. 14 had passed Sprague and was proceeding thence east toward Tyler another train of defendant's had passed Rathdrum and was proceeding thence west.

This train was known as train number 13, and was also being operated on telegraphic orders. These telegraphic orders were issued and promulgated by defendant's train-dispatcher, who was located at Sprague. The movements of train- No. 13 and 14 were both controlled and governed by these telegraphic orders issued to them respectively by the train-dispatcher. When train 14, proceeding eastward, had passed Sprague, and train 13, proceeding westward, had passed Rathdrum, the train-dispatcher at Sprague issued a telegraphic order directing these two trains to meet and pass each other at Marshall Junction. This order was duly transmitted and delivered to the engineer and conductor of both trains, and thereupon both trains proceeded upon their journey toward Marshall Junction, said meeting and passing point. Neither the engineer nor conductor of either of these trains had any power or authority to change the meeting place of these trains from Marshall Junction to any other point, but such change could only be made by the train-dispatcher at Sprague. Saif train-dispatcher had complete and absolute control in the matter of directing where said trains should meet and pass each other, and directing their movements over defendant's railroad.

Among plaintiff's other duties as brakeman it was his duty to set the brakes and stop his train when necessary, and to hold himself in readiness to apply such brakes whenever occasion required it. When train 14 reached Marshall Junction it stopped there for a short time and then pulled out and started eastward without waiting for train 13, and in violation of the orders above mentioned. The fact that said train did not wait for train 13 at Marshall Junction caused the collision complained of a short distance east of Marshall Junction, with train 13. The negligence of the engineer and conductor of train 14 was the proximate cause of this accident, and said engineer and conductor were negligent in violating said order and leaving Marshall Junction before train 13 had met and passed them. When train 14 left Marshall Junction plaintiff got on board the engine and was sitting in the firemen's seat when the collision occurred. He first saw the engine of train
13 when about 500 feet distant. Both trains were running
11 at such a rate of speed as to make it impossible to stop, and hence, seeing that a collision was inevitable, plaintiff jumped from the engine and received the injuries complained of.

It is further stipulated that either party may, at the hearing, introduce and make part of this stipulation any rules contained in defendant's rule book.

Dated July 21st, 1891.

ERWIN & WELLINGTON,
Plaintiff's Attorney-.
JOHN C. BULLITT, JR.,
Defendant's Attorney.

Indorsed in margin: Damages to be assessed by jury if def't is liable if not agreed upon. Stipulation. Filed June 24th, 1891, as of Jan'y 4th, 1891. Oscar B. Hillis, clerk.

And on July 24th, 1891, the following proceeding of court was had, viz:

United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1891.

JULY 24TH, 1891—Friday Morning.

Court opened pursuant to adjournment.
Present: Hon. R. R. Nelson, judge.

* * * * * * *

MICHAEL C. CAVENAUGH
vs.
NORTHERN PACIFIC RAILROAD COMPANY. } E. Law. 832.

A jury having been waived in this cause and the same having been submitted to the court on a stipulation and statement of facts.

Now the court, after due consideration thereof, and being fully advised in the premises, finds for the plaintiff in the sum of two thousand and one dollars ($2,001.00).

It is therefore considered, ordered and adjudged that the above-named plaintiff do have and recover of and from the above-named defendant the aforesaid sum of two thousand and one dollars, together with his costs and disbursements herein to be taxed and that he have execution therefor.

* * * * * * *

Term Minutes, volume 4, page 153.

And on the 23rd day of January, 1892, the following bill of exceptions was filed of record in said cause, to wit:

12 *Bill of Exceptions.*

United States Circuit Court, District of Minnesota, Third Division.

MICHAEL C. CAVANAUGH, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant. }

This action came on for trial at the June term of said court for 1891, at Saint Paul, Minnesota, on the 24th day of July, A. D. 1891, before Hon. R. R. Nelson, without a jury, it being stipulated in open court by the parties thereto that the case should be tried without a jury; and thereupon it was stipulated and agreed between the parties that the facts in this case, in addition to those facts established by the pleadings, are as follows:

On November 4, 1889, plaintiff was in defendant's employ as a brakeman. He had been employed by defendant in this capacity for some time prior to said date, and was familiar with his duties and the method of performing them, and was a skillful and competent brakeman. His duties as such brakeman were those ordi-

narily and usually pertaining to that position in railway employment. On the date of the accident he was running on one of defendant's freight trains known as number 14, in Washington. This train was running eastward, and was being operated upon what are known as telegraphic orders. The rules of defendant in force and effect at that time, and known to plaintiff and the other trainmen on said train, in respect of running and operating trains on telegraphic orders, are found on pages 36 to 49 inclusive, of defendant's book of rules, being numbered from 114 to 133 inclusive, and are hereby made a part of this stipulation as fully as if set out in full herein.

The stations on defendant's railroad, so far as material to this case, are commencing at the west and running thence east, Sprague, Tyler, Cheney, Marshall Junction, Spokane Falls, Trent, Hauser Junction and Rathdrum.

When train No. 14 had passed Sprague, and was proceeding thence east toward Tyler, another train of defendant's had passed Rathdrum and was proceeding thence west. This train was known as train number 13, and was also being operated on telegraphic order. These telegraphic orders were issued and promulgated by defendant's train-dispatcher, who was located at Sprague. The movements of trains No. 13 and 14 were both controlled and governed by these telegraphic orders issued to them respectively by the train-dispatcher. When train 14 proceeding eastward, had passed Sprague, and train 13 proceeding westward, had passed Rathdrum, the train-dispatcher at Sprague issued a telegraphic order directing these two trains to meet and pass each other at Marshall Junction.

13 This order was duly transmitted and delivered to the engineer and conductor of both trains, and thereupon said trains proceeded upon their journey toward Marshall Junction, said meeting and passing point.

Neither the engineer or conductor of either of these trains had any power or authority to change the meeting place of these two trains from Marshall Junction to any other point, but such change could only be made by the train-dispatcher at Sprague. Said train-dispatcher had complete and absolute control in the matter of directing where said trains should meet and pass each other, and directing their movements over defendant's railroad.

Among plaintiff's other duties as brakeman, it was his duty to set the brake to stop his train when necessary, and to hold himself in readiness to apply such brakes whenever occasion required it. When train 14 reached Marshall Junction, it stopped there for a short time, and then pulled out and started eastward without waiting for train 13, and in violation of the orders above mentioned. The fact that said trail did not wait for train 13 at Marshall Junction caused the collision complained of, a short distance east of Marshall Junction, with train 13. The negligence of the engineer and conductor of train 14 was the proximate cause of the accident, and said engineer and conductor were negligent in violating said order and leaving Marshall Junction before train 13 had met and passed them. When train 14 left Marshall Junction plaintiff got on board of the

engine and was sitting in the fireman's seat when the collision occurred. He first saw the engine of train 13 when about 500 feet distant. Both trains were running at such a rate of speed as to make it impossible to stop and hence, seeing that a collision was inevitable, plaintiff jumped from the engine and received the injuries complained of.

It is further stipulated that either party may at the hearing introduce and make part of this stipulation any rules contained in defendant's rule book.

And it is further stipulated that the plaintiff sustained damages by reason of the injuries named in the complaint to the amount of two thousand and one dollars.

Thereupon the following rules hereto attached were introduced and marked "Exhibit A," and admitted as the rules and regulations of the defendant which were admitted to be in force on the line of defendant's railroad at the time of plaintiff's injury.

Thereupon the court upon the *following* facts ordered judgment for the plaintiff in the sum of two thousand and one dollars and costs and disbursements, being the amount that was stipulated the damages should be assessed if the court found that the plaintiff should recover; to which order the defendant then and there duly excepted, which exception was allowed, and thereupon
14 judgment was entered in accordance with said order, as appears by record in said cause.

And because the foregoing matters and things do not appear of record in said action, the judge who tried said cause finding the same to be true and correct has signed and sealed this bill of exceptions this 23rd day of January, 1892, and ordered the same to be made a part of the record on said action.

R. R. NELSON, *Judge.*

St. Paul, Minn., Jan. 23rd, 1892.

It is hereby stipulated by and between the attorneys to this action that the foregoing may be signed, settled and allowed by the court as a "bill of exceptions" to be used upon appeal of this case.

ERWIN & WELLINGTON,
Plaintiff's Attorneys.
JOHN. C. BULLITT, JR., AND
TILDEN R. SELMES,
Defendant's Attorneys.

EXHIBIT "A"—RULES.

81. Whenever one train is to follow another on the same time (which must never occur ascending mountain grades), notice must be given to the forward train and the conductor thereof must notify in person all conductors whom he may meet at stations where he stops, of the facts, besides carrying the proper signal. One train fol-

lowing another must be kept at least one mile behind, except as stations or water tanks, which must be approached with great care.

157. Conductors will be held responsible for the safe management of their trains and for the strict performance of duty on the part of the men engaged with them. In order to secure effective work, conductors must make themselves familiar with the duties required from other train employés, and see that they are fully performed.

114. In moving trains by special order, each *section* shall be taken and considered as a *separate and distinct train*, and shall receive and run only under special orders addressed to *its own* conductor and engineer.

115. All orders for the movement of trains by telegraph will be addressed to the conductor and engineer, and written by the receiving operator on manifold paper, so arrange- that three impressions shall be taken. The conductor and engineer addressed shall read the order carefully, and, if understood, shall sign it, adding train number, which must be transmitted with it. It will then be repeated back over their signatures to the dispatcher, who will, if the order is correctly repeated, reply, "Order number (give number) is O. K.," sign and give time, all of which must be recorded on the order, and the whole countersigned by the receiving operator. One impression of the order, when properly signed, will be given to the conductors and one to the engineer. The third impression must be kept by the operator in his manifold book. Receiving operators *must not, under any circumstances*, repeat an order back until the *personal signatures* of the conductor and engineer are first obtained.

115½. When orders are sent to a train at a non-telegraphic station through the medium of the conductor and engineer of another train, the conductor and engineer carrying the order will send back their understanding to the dispatcher; the order can then be delivered to the other train and have the same force and effect as though signed by them.

116. All orders and messages relative to the movement of trains must be written in full, and no abbreviations used except the telegraph abbreviations "12" (How do you understand), and "13" (I understand). Figures must be written out in full and duplicated; thus, twelve thirty (12:30).

117. A special order for the movement of trains, sent by telegraph, *has no force or value* until the understanding of the conductor and engineer has been repeated to the person giving the order, and been approved by him as "O. K." and not then until the approval is entered upon the order and the operator has signed his own name thereon. When, by reason of the telegraph failing, or from any other cause, the understanding cannot be sent or "O. K." given, *the order is void and will be so considered by all concerned.*

118. Both conductors and engineers shall sign their names to the order. Neither shall sign for the other, not the operator or any other person for either of them, under any pretext whatever.

119. A train shall not be started to run by special order unless

both the conductor and engineer have a copy of the order complete as prescribed in rule 115 in their possession, nor until they have compared the copies of the order one with the other and with the understanding given, and know that they agree. Operators must not allow a copy of an order to leave their possession until complete, as prescribed in rule 117; not enter "O. K." thereon in advance of its receipt, not sign their names thereon until the order is otherwise all complete.

16 120. Alterations, interlineations and erasures must not appear on orders delivered to trainmen. Should it be necessary to make any change in first copy the dispatcher must repeat the entire order and a new copy be made by receiving operator.

121. Not more than one person on a district or division shall be permitted at the same time to give special orders for the movement of trains.

122. Division superintendents and train-dispatchers under their directions are the only persons authorized to give such orders, and the authority is limited to their respective divisions or districts.

123. Train-dispatchers shall only give orders in the name of the division superintendent, adding thereto the initial of their own.

124. A transfer of the authority to give special orders for the movement of trains shall not be made except in writing containing a specific transfer of the authority and complete statement of all unexpired orders, and if done by telegraph, an understanding shall be returned before the authority is exercised by another person and "O. K." given, as provided for special orders in rule 117.

125. When orders are awaiting the arrival of a train the operator must display a red signal. On sight of said signal at a telegraph station, conductors and engineers *must go at once* to the office to receive and respond to orders. *The red signal must invariably be lighted after dark and in complete readiness for instant use.* Conductors and engineers must keep a careful watch for this signal at telegraph stations; and when seen the train must be brought to a full stop and they must ascertain from the operator in charge the object of the signal. If the orders are not for their train, *they must each obtain a clearance to that effect* from the operator in charge. These clearances must be turned in at the end of each round trip to dispatcher, and his receipt taken for same on car book.

126. The absence of a signal at any telegraph station between the hours of 7 a. m. and 7 p. m., or the showing of a *whi* white signal *at the place where the train-order signal is displayed* is clearance so far as it relates to train orders, but at all night telegraph offices (see list in time-card, changes must be bulletines and wires to trains liable to be effected) between the hours of 7 p. m. and 7 a. m. all trains will consider themselves held for orders unless they receive a clearance as per rule 125. In the absence of a white signal at any night telegraph office, during night, trains must be brought to a full stop and position of signal-board ascertained before proceeding. Report all such cases to superintendent.

127. When a train is held for orders by a "13" order *they cannot be released by any form of clearance* or notice of bad track or bridges

unless the holding order is recalled. *It requires a regular "13" order to release a train held for orders by a "13" order.*

17 128. When an operator receives an order to flag and hold a train for orders the "13" *must not be sent back* until the dispatcher is not-fied "*My signal displayed.*" At change of night and day operator the relieving operator will sign holding orders, and have them repeated to dispatcher for his O. K.

129. In giving orders against passenger trains dispatcher will in every case get the understanding from conductor and engineer of train having the right to the road before moving any train against them, except at terminal stations, where dispatchers may depend upon operators, red signal and the signature- of two or more responsible employés to the order. The signatures of agent and yard-master, with the operator, are preferable; but if they cannot be obtained, then the signature of any other responsible employé will answer. If it is not possible to obtain the additional signatures without serious delay, and the train to be held is obliged to pass a telegraph office before it can leave the station, then the red signal and the operator's signature can be used for moving trains against, but the operator must secure the additional signatures as soon as possible. If, however, the train can pull out of the yard without passing the telegraph office, then *under no circumstances* will trains be moved against it until the three signatures are obtained to the order.

130. The general rule to be observed in moving freight trains against each other is to obtain the understanding of the conductor and engineer of the train having the right to read before running any train against them. If, however, the conditions are favorable for holding freight trains through the operator, and serious delays can be avoided thereby, dispatcher can depend upon the signature of the operator, red signal and torpedoes to hold such ruling train for orders at any telegraph station other then the meeting point, and in extreme cases trains can be held for each other at the meeting points by putting out red signals and torpedoes 1,000 feet in both directions from the telegraph office. When there is no telegraph office at the meeting point, the red signal and torpedoes must be used for holding at the telegraph office distant from the meeting point. At terminal stations freight trains can be held as provided in rule 129.

131. Before any train is moved against an operator's red light it will be the duty of the dispatcher to inquire of the operator the condition of his signal lamps and the number of torpedoes he has on hand, and at seven o'clock each night all night offices will report the condition of red lamps, and number of torpedoes on hand.

132. Every precaution must be taken to prevent orders from being forgotten, and to this and avoid holding trains beyond too many telegraph stations.

18 132½. Train or engine men are positively prohibited from going to meals or delaying their trains for any cause after receiving an order which allows them to proceed without first obtaining express permission to do so from the train-dispatcher, and when

such permission is received the conductor must report when he is ready to go, and ascertain if any further order for him.

Indorsed: Bill of exceptions. Filed Jan'y 23rd, 1892. Oscar B. Hillis, clerk.

Stipulation.

United States Circuit Court of Appeals, Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
MICHAEL C. CAVANAUGH, Defendant in Error. } No. 108.

It is hereby stipulated by counsel for the respective parties, that the clerk of the United States circuit court of appeals, be, and he is hereby, authorized and directed to insert, immediately following the bill of exceptions, in the transcript of record from the circuit court of the United States for the district of Minnesota, and in the record to be printed in the above cause, the attached certified copy of the assignment of errors.

JNO. C. BULLITT, JR., &
TILDEN R. SELMES,
Counsel for Plaintiff in Error.
ERWIN & WELLINGTON,
Counsel for Defendant in Error.

Assignments of Error.

United States Circuit Court, District of Minnesota, Third Division.

MICHAEL C. CAVANAUGH, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, Defendant.

Now comes the above-named defendant, by Jno. C. Bullett, Jr., and Tilden R. Selmes, its attorneys, and says that in the record of proceedings in said court in the above-entitled action, and also in giving judgment in said action there is manifest error in this:

That the court erred in ordering that judgment be entered for the plaintiff upon the facts as stipulated in said action in that:

(*a.*) The negligence as shown by the stipulated facts which caused the injuries for which the plaintiff seeks to recover, was the negligence of a fellow-servant in the same line of employment with the plaintiff, and not the negligence of the defendant, or a servant or employé for whose negligence it would be responsible to the plaintiff.

19 And the said defendant prays that the judgment aforesaid rendered against it in this action for the errors aforesaid, and the other many and manifest errors in said record and proceedings aforesaid, may be reversed, canceled and altogether held for noth-

ing, and that it may be restored in all things which it has lost by occasion of said judgment.

JNO. C. BULLITT, JR., &
TILDEN R. SELMES,
Attorneys for Defendant.

Indorsed: Filed Jan'y 23, '92. Oscar B. Hillis, clerk.

UNITED STATES OF AMERICA, } *sct:*
District of Minnesota, Third Division, }

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper-writing with the original thereof, which is in my custody as such clerk, and that such copy is a correct copy of such original, and of the whole thereof, in the cause therein named.

Seal of the U. S. Circuit Court, Dist. of Minnesota, Third Division.

Witness my hand as clerk, and the seal of said court. Done at my office in Saint Paul, Minnesota, this 1st day of April, A. D. 1892.

OSCAR B. HILLIS, *Clerk,*
By —— ——, *Deputy.*

No. —. United States circuit court, district of Minnesota, third division. Michael C. Cavanaugh, plaintiff, *vs.* Northern Pacific R. R. Company, defendant. Stipulation and certified copy of the assignments of error. Filed Apr. 11, 1892. John D. Jordan, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable, the United States circuit court of appeals for the eighth circuit, that the foregoing, consisting of 37 pages, numbered consecutively from 1 to 37 inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court, and I do further certify and return that I have annexed to
20 said transcript, and included within said paging, the original citation, together with the proof of service thereof.

Seal of the U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 26th day of February, A. D. 1892.

OSCAR B. HILLIS, *Clerk,*
By —— ——, *Deputy.*

Filed Mar. 23, 1892.

JOHN D. JORDAN, *Clerk.*

21 And on the twenty-ninth day of April, A. D. 1892, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Pl'ff in Error, *vs.* MICHAEL C. CAVANAUGH, Def't in Error. } No. —. October Term, 189–.

The clerk will enter my appearance as counsel for the plaintiff in error.

JNO. C. BULLITT, JR., &
TILDEN R. SELMES.

Endorsed: U. S. circuit court of appeals, eighth circuit, 1891, October term. No. 108. Northern Pacific Railroad Company *vs.* Michael C. Cavanaugh. Appearance. Filed Apr. 29, 1892. John D. Jordan, clerk. Jno. C. Bullitt, Jr., & Tilden R. Selmes, counsel for pl'ff in error.

And on the thirteenth day of May, A. D. 1892, an appearance of counsel for defendant in error was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error, *vs.* MICHAEL C. CAVANAUGH. } No. 108. October Term, 1891.

The clerk will enter my appearance as counsel for the defendant in error.

C. WELLINGTON.

Endorsed: U. S. circuit court of appeals, eighth circuit, 1891, October term. No. 108. Northern Pac. R. R. Co. pl'ff in error, *vs.* M. C. Cavanaugh. Appearance. Filed May 13, 1892. John D. Jordan, clerk. C. Wellington, St. Paul, Minn., counsel for def't in error.

22 And on the fourteenth day of June, A. D. 1892, in the record of the proceedings of said circuit court of appeals is an entry in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, October Term, 1891.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
MICHAEL C. CAVANAUGH, Defendant in Error.
} No. 108.

In error to the circuit court of the United States for the district of Minnesota.

TUESDAY, *June* 14, 1892.

This cause, having been called for hearing in its regular order, was argued by Mr. John C. Bullitt, Jr., in behalf of plaintiff in error, and by Mr. Cyrus Wellington in behalf of defendant in error.

Thereupon this cause was submitted to the court upon the transcript of the record from said circuit court and the briefs of counsel filed herein.

And on the twenty-fifth day of July, A. D. 1892, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

23 United States Circuit Court of Appeals, Eighth Circuit, October Term, A. D. 1891.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
MICHAEL C. CAVANAUGH, Defendant in Error.
} No. 108. In Error to the Circuit Court of the United States for the District of Minnesota.

Before Caldwell and Sanborn, circuit judges, and Shiras, district judge.

Statement.

This was an action brought by the defendant in error against the Northern Pacific Railroad Company for damages alleged to have resulted to him from the negligence of the corporation. A jury was waived and the case tried by the court upon a written stipulation, from which the following facts appear:

The plaintiff below was a brakeman in the employment of the defendant corporation on November 4th, 1889, upon one of defendant's freight trains, known as number fourteen, in the State of Washington, which was being operated on telegraphic orders. He had been employed by defendant for some time as a brakeman, and was a competent brakeman, familiar with his duties, which were those ordinarily appertaining to the position of brakeman on a railroad. The stations on defendant's road, so far as material in this case are, commencing at the west and running thence eastward, Sprague, Tyler, Cheney, Marshall Junction, Spokane Falls, Trent,

Hauser Junction and Rathdrum. Train number fourteen was running eastward, and when it had passed Sprague and was proceeding toward Tyler another of defendant's trains, known as number thirteen, which was also operated on telegraphic orders, had passed Rathdrum and was running thence westward. Thereupon the train-dispatcher at Sprague issued a telegraphic order, which was in due season delivered to the conductor and engineer of each of these trains, to meet and pass each other at Marshall Junction. This train-dispatcher had absolute control in the matter of directing where said trains should meet and pass each other, and neither the engineer or conductor of either of these trains had any power to change the place of meeting to any other point. One of the rules of the defendant under which these trains were being operated was:

24 "Conductors will be held responsible for the safe management of their trains and for the strict performance of duty on the part of the men engaged with them. In order to secure effective service conductors must make themselves familiar with the duties required from other train employés and see that they are fully performed."

When train number fourteen reached Marshall Junction it stopped a few moments and then pulled out and started eastward without waiting for train number thirteen, in violation of the telegraphic order, and soon collided with train number thirteen and damaged the plaintiff in the sum of two thousand and one dollars by inflicting personal injuries upon him. The negligence of the engineer and conductor of train fourteen was the proximate cause of the accident, and they were negligent in violating the telegraphic order and leaving Marshall Junction before train number thirteen met and passed them.

Upon these agreed facts the court below ordered judgment for the plaintiff for the stipulated damages, to which defendant excepted. Judgment was entered pursuant to the order, to reverse which this writ of error was sued out.

The only error assigned is that the court erred in ordering judgment for the plaintiff.

Mr. John C. Bullitt, Jr., Mr. Tilden R. Selmes for plaintiff in error.

Mr. C. Wellington (with whom upon the brief was Mr. W. W. Erwin) for defendant in error.

Sanborn, circuit judge, after stating the facts as above, delivered the opinion of the court.

The facts in this case bring it clearly within the decision of the Supreme Court in Railroad Company *vs.* Ross, 112 U. S., 377, and the judgment below is affirmed with costs.

Filed July 25, 1892.

25 And on the twenty-fifth day of July, A. D. 1892, in the record of the proceedings of said circuit court of appeals is a judgment in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, October Term, 1891.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
MICHAEL C. CAVANAUGH, Defendant in Error. } No. 108.

In error to the circuit court of the United States for the district of Minnesota.

MONDAY, *July* 25, 1892.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs, and that Michael C. Cavanaugh recover against the Northern Pacific Railroad Company the sum of twenty dollars for his costs herein and have execution therefor.

And on the thirtieth day of September, A. D. 1892, there was filed in the office of the clerk of said circuit court of appeals a petition for writ of error in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
MICHAEL C. CAVANAUGH, Defendant in Error.

To the honorable judges of the United States circuit court of appeals for the eighth circuit:

Your petitioner, The Northern Pacific Railroad Company,
26 the plaintiff in error in the above-entitled action, respectfully shows that by the judgment heretofore rendered by said United States circuit court of appeals for the eighth circuit in the above-entitled cause a manifest error hath happened, to the great damage of your petitioner, in this: that a great and manifest error of law occurred at the trial of said cause against the objection of your petitioner and to its great damage, all of which will more fully appear by the record of said court in said case.

Wherefore your petitioner prays your honors to allow a writ of error from the Supreme Court of the United States to be directed to said United States circuit court of appeals for the eighth circuit, whereby, under the seal of said United States circuit court of appeals for the eighth circuit, the record and proceedings aforesaid, with all things concerning the same, may be transmitted to the Supreme Court of the United States with said writ of error, and that, the records and proceedings aforesaid being duly inspected, the said Supreme Court of the United States will cause further to be done

therein and correct that error what of right and according to the laws and customs of the United States should be done.

JAMES McNAUGHT,
TILDEN R. SELMES,
Attorneys for Petitioner.

Endorsed: N. P. R. R. Co., pl'ff in error, *vs.* Michael C. Cavanaugh. Petition. Filed Sep. 30, 1892. John D. Jordan, clerk.

And on the thirtieth day of September, A. D. 1892, there was filed in the clerk's office of said circuit court of appeals an assignments of error in words and figures following, to wit:

United States Supreme Court.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
MICHAEL C. CAVANAUGH, Defendant in Error.

27 *Assignments of Error.*

Now comes the above-named plaintiff in error, The Northern Pacific Railroad Company, by Tilden R. Selmes, its attorney, and says that in the record and proceedings in the above-entitled action in the United States circuit court of appeals for the eighth circuit there is manifest error, in this, to wit:

First. The plaintiff in error assigns as error the several errors set out in the assignments of error forming part of the record in the above-entitled action before said circuit court of appeals, in, to wit, that said circuit court for the district of Minnesota erred in ordering that judgment be entered in favor of the plaintiff on the facts as stipulated in said action, in that—

(*a.*) The negligence as shown by the stipulated facts which caused the injuries for which the plaintiff seeks to recover was the negligence of a fellow-servant in the same line of employment with the plaintiff, and not the negligence of the defendant or a servant or employé for whose negligence it would be responsible to the plaintiff.

Second. The said circuit court of appeals, before which was heard the writ of error which brought up the record in this action from the circuit court of the United States for the district of Minnesota to said circuit court of appeals, erred in making its order on the ——, affirming the judgment of the said circuit court and directing a mandate to issue to the circuit court of the United States for the district of Minnesota, directing that court to proceed in accordance with the decision and order of the circuit court of appeals.

Third. That said circuit court of appeals erred in not sustaining the writ of error then before it and not reversing the judgment entered in this action in said circuit court and in not directing a new trial of the issues raised by the pleadings in said action.

And said Northern Pacific Railroad Company, the plaintiff in

error, prays that the judgment aforesaid entered herein in the circuit court for the district of Minnesota and the order entered herein as aforesaid by the circuit court of appeals and the judgment
28 of affirmance to be entered in said circuit court for the district of Minnesota upon said order of affirmance, for the errors aforesaid and for other errors in the record and proceedings aforesaid, be reversed, annulled, and altogether held for naught, and that the plaintiff in error may be restored to all things which it hath lost by occasion of said judgments and order.

JAMES McNAUGHT,
TILDEN R. SELMES,
Attorney- for Plaintiff in Error.

And on the thirtieth day of September, A. D. 1892, there was filed in the clerk's office of said circuit court of appeals a supersedeas bond in said cause in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
MICHAEL C. CAVANAUGH, Defendant in Error.

Know all men by these presents that we, said Northern Pacific Railroad Company, a corporation created by and existing under an act of Congress of the United States of America entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound, on the Pacific coast, by the northern route," approved July 2, 1864, by W. S. Mellen, its general manager, as principal, and Maurice Auerbach, of Saint Paul, Minnesota, and Jasper B. Tarbox, of St. Paul, Minnesota, as sureties, are held and firmly bound unto the above-named Michael C. Cavanaugh in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said Michael C. Cavanaugh, his executors, administrators, and assigns; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each
29 of our heirs, executors, and administrators, and the successors and assigns of said company, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of September, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas the above-named Northern Pacific Railroad Company has prosecuted a writ of error in the Supreme Court of the United States to the circuit court of appeals for the eighth circuit to reverse an order made by the said United States circuit court of appeals herein, directing that a mandate issue to the circuit court of the United States for the district of Minnesota, which mandate directs said circuit court to enter judgment affirming the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the district of Minnesota:

Now, therefore, the condition of this obligation is such that if the

above-named Northern Pacific Railroad Company shall prosecute said writ of error to effect and answer all damages and costs if it shall fail to make its plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

NORTHERN PACIFIC RAILROAD COMPANY,
By WM. S. MELLEN, *Gen'l Manager.*
MAURICE AUERBACH. [SEAL.]
J. B. TARBOX. [SEAL.]

Approved:
DAVID J. BREWER,
Associate Justice Sup. Ct.

UNITED STATES OF AMERICA, }
District of Minnesota. }

Maurice Auerbach and Jasper B. Tarbox, being severally duly sworn, each for himself deposes and says that he is one of the sureties who executed the foregoing bond; that he, said Maurice Auerbach, is a resident and freeholder, and he, said Jasper B. Tarbox, is a resident and freeholder in said district of Minnesota, and is worth the sum of five thousand dollars over all his just debts and liabilities.

MAURICE AUERBACH.
JASPER B. TARBOX.

Sworn to before me this 5th day of September, 1892.
HIRAM F. STEVENS,
Notary Public.

30 And on the thirtieth day of September, A. D. 1892, a writ of error was filed in the clerk's office of said circuit court of appeals in said cause, the original of which is hereto attached and herewith returned:

31 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of appeals, before you or some of you, between The Northern Pacific Railroad Company, plaintiff in error, and Michael C. Cavanaugh, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have

the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 26th day of September, in the year of our Lord one thousand eight hundred and ninety-two.

Seal of the Supreme Court of the United States.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Original. N. P. R. R. Company, pl'ff in error, *vs.* Michael C. Cavanaugh. Writ of error. Filed Sep. 30, 1892. John D. Jordan, clerk.

Return to Writ.

UNITED STATES OF AMERICA, *Eighth Circuit,* } ss:

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States from the United States circuit court of appeals for the eighth circuit a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said court, at office, in the city of St. Paul, Minnesota, this 14th day of October, A. D. 1892.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

32 And on the thirtieth day of September, A. D. 1892, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the original of which is hereto attached and herewith returned:

33 United States Circuit Court of Appeals for the Eighth Circuit.

NORTHERN PACIFIC RAILROAD COMPANY, Plaintiff in Error,
vs.
MICHAEL C. CAVANAUGH, Defendant in Error.

To Michael C. Cavanaugh, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington,

within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein The Northern Pacific Railroad Company is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 26 day of Sept., A. D. 1892.

DAVID J. BREWER, *Judge.*

[Endorsed:] Original. N. P. R. R. Co., pl'ff in error, *vs.* Michael C. Cavanaugh. Citation. Due service of the within citation is hereby admitted this 29th day of September, 1892. C. Wellington and W. W. Erwin, att'y- for def't in error. Filed Sep. 30, 1892. John D. Jordan, clerk.

34 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing pages, numbered from 1 to 34, inclusive, contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of Northern Pacific Railroad Company, plaintiff in error, *vs.* Michael C. Cavanaugh, defendant in error, No. 108, October term, 1891, as the same remain upon the files and records of said United States circuit court of appeals.

I further certify that the original writ of error and citation in said cause are hereto attached and herewith returned.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Paul, Minnesota, this fourteenth day of October, A. D. 1892.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Endorsed on cover: Case No. 15,229. United States circuit court of appeals, 8th circuit. Term No., 201. The Northern Pacific Railroad Company, plaintiff in error, *vs.* Michael C. Cavanaugh. Filed December 9, 1892.